

## House Bill 1023 (COMMITTEE SUBSTITUTE)

By: Representatives Franklin of the 43<sup>rd</sup>, Forster of the 3<sup>rd</sup>, Willard of the 49<sup>th</sup>, Lane of the 167<sup>th</sup>, Neal of the 1<sup>st</sup>, and others

## A BILL TO BE ENTITLED

## AN ACT

1 To amend Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to  
2 juvenile proceedings, so as to provide a procedure for children who are 16 or 17 years of age  
3 to petition the juvenile court for permission to marry; to provide for definitions; to provide  
4 for time and notice of hearing; to provide for conduct of the hearing; to provide for  
5 applicability to nonresidents; to amend Chapter 3 of Title 19 of the Official Code of Georgia  
6 Annotated, relating to marriage generally, so as to provide that a person be at least 18 years  
7 of age in order to contract for marriage except under limited circumstances; to repeal an  
8 exception to such age requirement in the case of pregnancy or live birth; to repeal an  
9 exception to parental consent based upon pregnancy or live birth; to change certain  
10 provisions relating to proof of age for applicants to marry; to change certain provisions  
11 relating to parental consent; to repeal a provision relating to notification of parents for  
12 underage applicants and additional fees; to provide for related matters; to repeal conflicting  
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to juvenile  
17 proceedings, is amended by adding a new Article 6 to the end of the chapter, to read as  
18 follows:

19 "ARTICLE 6

20 15-11-180.

21 As used in this article, the term:

(1) 'Applicant' means a person 16 or 17 years of age applying for permission to contract for marriage for whom parental consent as provided in Code Section 19-3-37 has not been given.

(2) 'Guardian' shall have the same meaning as provided in Code Section 19-3-37.

(3) 'Parent' shall have the same meaning as provided in Code Section 19-3-37.

15-11-181.

Either applicant may petition the juvenile court in which the applicant resides for a waiver of the age requirement for marriage pursuant to the procedures set forth in this article. The juvenile court shall assist the applicant in preparing the petition and notices required pursuant to this subsection. No filing fees shall be required of any applicant who uses the procedures set forth in this article.

15-11-182.

Notwithstanding Code Sections 15-11-38, 15-11-38.1, and 15-11-39, the applicant shall be notified of the date, time, and place of the hearing at the time of filing the petition. The hearing shall be held within 30 days of the date of filing. The parents or guardian of the applicant and the parents or guardian of the prospective spouse if the prospective spouse is less than 18 years of age shall be served with the petition or with a summons or otherwise notified of the hearing.

15-11-183.

(a) The applicant, prospective spouse, parents or guardian of the applicant, and parents or guardian of the prospective spouse if the prospective spouse is less than 18 years of age may participate in the court proceedings. The court may hear testimony from any interested party to the proceeding and shall consider parental consent utilizing the procedures set forth in Code Section 19-3-37.

(b) The requirement that a person shall be 18 years of age as set forth in paragraph (2) of subsection (a) of Code Section 19-3-2 shall be waived if the court finds that it is in the best interest of the applicant to allow the parties to contract for marriage.

(c) A court that conducts proceedings under this Code section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a record of the evidence be maintained. The juvenile court shall render its decision within seven days of the conclusion of the hearing and a certified copy of the same shall be furnished to the applicant, the prospective spouse, the parents or guardian of the applicant,

1 and the parents or guardian of the prospective spouse if the prospective spouse is less than  
2 18 years of age.

3 15-11-184.

4 The requirements and procedures of this article shall apply to all persons 16 or 17 years of  
5 age within this state whether or not such persons are residents of this state."

## 6 SECTION 2.

7 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage  
8 generally, is amended by striking Code Section 19-3-2, relating to who may contract  
9 marriage, and inserting in lieu thereof the following:

10 "19-3-2.

11 (a) To be able to contract marriage, a person must:

12 (1) Be of sound mind;

13 (2) Except as provided in subsection (b) of this Code section and Article 6 of Chapter 11  
14 of Title 15, be ~~Be~~ at least ~~16~~ 18 years of age. ~~If either applicant is under the age of~~  
15 ~~majority, parental consent shall be required, as provided in Code Section 19-3-37.~~  
16 ~~However, the age limitations contained in this paragraph shall not apply upon proof of~~  
17 ~~pregnancy on the part of the female or in instances in which both applicants are the~~  
18 ~~parents of a living child born out of wedlock, in which case the parties may contract~~  
19 ~~marriage regardless of age;~~

20 (3) Have no living spouse of a previous undissolved marriage. The dissolution of a  
21 previous marriage in divorce proceedings must be affirmatively established and will not  
22 be presumed. Nothing in this paragraph shall be construed to affect the legitimacy of  
23 children; and

24 (4) Not be related to the prospective spouse by blood or marriage within the prohibited  
25 degrees.

26 (b) If either applicant for marriage is 16 or 17 years of age, parental consent as provided  
27 in Code Section 19-3-37 shall be required."

## 28 SECTION 3.

29 Said chapter is further amended by striking in its entirety Code Section 19-3-36, relating to  
30 proof of age of applicants, physician's certificate of pregnancy or parenthood of applicants  
31 under age of 16, inspection of certificate, and destruction of certificate, and inserting in lieu  
32 thereof the following:

33 "19-3-36.

(a) The judge of the probate court to whom the application for a marriage license is made shall satisfy himself or herself that the provisions set forth in Code Section 19-3-2 regarding age limitations are met or that such limitations are not required by virtue of an order issued pursuant to Code Section 15-11-183. If the judge does not know of his or her own knowledge the age of a party for whom a marriage license is sought, ~~he~~ the judge shall require the applicant to furnish ~~him~~ the court with documentary evidence of proof of age in the form of a birth certificate, driver's license, baptismal certificate, certificate of birth registration, selective service card, court record, passport, immigration papers, alien papers, citizenship papers, armed forces discharge papers, armed forces identification card, or hospital admission card containing the full name and date of birth. In the event an applicant does not possess any of the above but appears to the judge to be at least 25 years of age, the applicant, in lieu of furnishing the judge with one of the above, may give an affidavit to the judge stating the applicant's age. Applicants who have satisfactorily proved that they have reached the age of majority may be issued a marriage license immediately.

~~(b) In cases where either or both of the applicants have not yet reached the age of 16 years, the underage applicant or applicants must submit evidence in the form of a licensed physician's certificate that the female is pregnant or evidence that both applicants are parents of a living child born out of wedlock, in which case the parties may be issued a marriage license immediately. The certificate signed by a licensed physician shall be available for inspection by the parents or guardians of either the female or male applicant under this subsection, prior to the destruction of the certificate as provided in this subsection; but the certificate shall not be open to public inspection except on order of a judge of the superior court. After the birth of the child and upon the presentation of the birth certificate of the child to the judge of the probate court and the verification of the accuracy of the birth certificate, the physician's certificate that the female was pregnant and all records of the certificate under the control of the judge shall be destroyed. For purposes of this subsection, the term 'licensed physician's certificate' shall include only those certificates signed by physicians licensed under Chapter 34 of Title 43."~~

#### SECTION 4.

Said chapter is further amended by striking Code Section 19-3-37, relating to parental consent to marriage of underage applicants, when necessary, and how obtained, and inserting in lieu thereof the following:

"19-3-37.

(a) *Definitions.* As used in this Code section, the term:

(1) 'Guardian' shall be held to include the same relationships between spouses as the relationships described in paragraph (2) of this subsection between parents and means:

(A) Any person at least five years older than the applicant standing in loco parentis to the applicant for at least two years;

(B) Any person at least five years older than the applicant with whom the applicant has lived for at least two years and who has or would be allowed to claim the applicant as a dependent for the purposes of a federal dependent income tax deduction;

(C) Any relative by blood or marriage at least five years older than the applicant and with whom the applicant has lived at least two years, when the whereabouts of the applicant's parents are unknown; or

(D) A court appointed guardian.

(2) 'Parent' means:

(A) Both parents if the parents are living together;

(B) The parent who has legal custody if the parents are divorced, separated, or widowed; or

(C) Either parent if the parents are living together but one parent is unavailable because of illness or infirmity or because he or she is not within the boundaries of this state or because physical presence is impossible.

(b) *When parental consent required; how obtained.* ~~Except when the female applicant is pregnant or when both applicants are the parents of a living child born out of wedlock, in~~  
In cases where the parties applying for a license have not yet reached the age of majority are 16 or 17 years of age, their ages to be proved to the judge of the probate court as provided in Code Section 19-3-36, the parents or guardians of each underage applicant ~~must~~ shall appear in person before the judge and consent to the proposed marriage, provided that if physical presence because of illness or infirmity is impossible, an affidavit by the incapacitated parent or guardian along with an affidavit signed by a licensed attending physician stating that the parent or guardian is physically incapable of being present shall suffice. The licensed attending physician shall include only those physicians licensed under Chapter 34 of Title 43 or under corresponding requirements pertaining to licensed attending physicians in sister states.

(c) *Alternative methods for obtaining parental consent.*

(1) When the parents or guardians of any underage applicants requiring parental consent reside within the state but in a county other than the county where the marriage license is to be issued, it shall not be necessary for the parents or guardians to appear in person before the judge of the probate court of the latter county and consent to the proposed

1 marriage, if the parents or guardians appear in person and consent to the proposed  
2 marriage before the judge of the county in which they reside.

3 (2) Where the parents or guardians of any underage applicants requiring parental consent  
4 reside outside the state, it shall not be necessary for the parents or guardians to appear in  
5 person before the judge of the probate court and consent to the proposed marriage, if the  
6 parents or guardians appear in person before the judicial authority of their county who is  
7 authorized to issue marriage licenses and consent to the proposed marriage before the  
8 judicial authority. If the parents or guardians are physically incapable of being present  
9 because of illness or infirmity, the illness or infirmity may be attested to by an attending  
10 physician licensed in such state, as is provided for in subsection (a) of this Code section.

11 (3) Where the alternate provisions for parental consent are utilized under paragraph (1)  
12 or (2) of this subsection, the parents or guardians shall obtain a certificate from the judge  
13 of the probate court or the proper judicial officer before whom they have appeared with  
14 the seal and title of the official appearing thereon, the certificate containing information  
15 to the effect that the parents or guardians appeared before the judge or judicial officer and  
16 consented to the proposed marriage."

#### 17 SECTION 5.

18 Said chapter is further amended by striking Code Section 19-3-28, relating to notification of  
19 parents of underage applicants and an additional fee, and inserting in lieu thereof the  
20 following:

21 "19-3-38.

22 ~~The judge of the probate court shall be required, in all cases where parental consent is not~~  
23 ~~required under Code Sections 19-3-2, 19-3-36, and 19-3-37, to notify the parents of any~~  
24 ~~male or female 17 years of age or younger who applies for a marriage license. The parents~~  
25 ~~shall be notified immediately by first-class mail at their last known address. In license~~  
26 ~~applications which require notification of parents under this Code section, the judge shall~~  
27 ~~collect an additional fee of \$1.00, which shall be in addition to any other fee authorized by~~  
28 ~~law. Reserved.~~

#### 29 SECTION 6.

30 All laws and parts of laws in conflict with this Act are repealed.